

- (1) Did claimant suffer personal injury by accident arising out of and in the course of his employment with respondent?
- (2) Did claimant provide respondent notice of the alleged accidental injury in a timely fashion?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds, for preliminary hearing purposes, that the Order of the Assistant Director should be affirmed. Claimant, a well-respected long-term employee of respondent, performed heavy manual labor involving lifting between 75 and 150 pounds on a regular basis. It was well-known to respondent's employees and management that claimant had ongoing back problems which preexisted his employment with respondent. It was also known to the management of respondent's company that the work claimant performed for respondent contributed to his ongoing condition. Through the months of May, June and July 1997, claimant's condition worsened substantially and he began experiencing symptoms into his leg. Several witnesses for respondent expressed concern that claimant's leg problems, including the numbness, would interfere with his ability to properly and safely drive a truck. Respondent's representatives were aware that claimant's condition was worsening to the point where, on July 24, 1997, claimant was forced to leave work early and seek medical treatment.

While it is acknowledged that claimant had been undergoing chiropractic treatment since as early as February 1996, it is significant that claimant's chiropractic treatments no longer provided benefit beginning in May 1997. At that time, claimant contacted his family physician and was referred for more extensive treatment than could be provided by a chiropractor. On August 21, 1997, claimant underwent surgery with Dr. K. N. Arjunan including an excision of the far lateral disc herniation on the right at L4-L5. The operative procedure included a fasciectomy and discectomy at L4-L5 on the right side with good results.

While respondent's witnesses testify that claimant did not advise them he was filing a workers' compensation claim for the back injury, they do acknowledge that claimant's symptoms definitely worsened through May, June and July 1997, and certain of respondent's representatives acknowledged that claimant's work contributed to his increased symptomatology.

The Appeals Board therefore finds that the Order by the Assistant Director granting claimant benefits for an injury suffered through July 24, 1997, to his low back should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Assistant Director Brad E. Avery dated April 30, 1998, should be and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

---

BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Mark E. Kolich, Kansas City, KS  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director